

November 27, 2012

Trudy K. Thomas
ATP Ministries
P O Box 697
Murrieta, CA 92564

Re: Your Request for Advice
Our File No. A-12-165

Dear Ms. Thomas:

This letter responds to your request for advice on behalf of Victor Marx regarding the provisions of the Political Reform Act (the “Act”)¹ that prohibit the receipt of honoraria.

QUESTION

If Mr. Marx were to become an elected public official, would the income Mr. Marx earns through his ministry qualify as prohibited honoraria?

CONCLUSION

Payments Mr. Marx would receive for continuing his ministry would be income received in the practice of a bona fide business, trade, or profession, and while reportable, would not be prohibited honoraria.

FACTS

Victor Marx is an ordained pastor who owns a national faith-based non-profit business organization called With God All Things Are Possible Ministries aka All Things Possible Ministries (“ATP Ministries”). Mr. Marx has been conducting the ATP Ministries for the last 10 years. You described the mission of the ATP Ministries as:

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

“The primary goal of this organization is to provide resources to children who are hurting from abuse and abandonment. Victor and his team reach out personally to our nation’s youth who are in public and private schools to help prevent them from embarking on the downward spiral of bad choices which can lead to being locked up in a detention center or youth prison, or painfully resorting to suicide. In addition, Victor spends much time reaching incarcerated youth to help them know that the cycle of craziness can be broken. He effectively engages students with entertaining, humorous and sobering presentations to show how to make the right choices even while being in the wrong circumstances.

“ATP Ministries, as other bona fide non-profit businesses, relies on contributions from donors [and] offering of resources such as ATP Ministries T-shirts, Victor’s testimony books and DVD’s - all part of the ATP Ministries brand and which monies go back into the Ministry. For Victor’s services as President of ATP, he is provided a salary paid directly through ATP Ministries. However his main ministry is not making speeches for pay.”

“Victor is considered by ATP Ministries as a resource provided by ATP to help our nation’s hurting youth. Therefore, when Victor is called on by ATP Ministries to reach out to youth or other events, ATP Ministries requests consideration of the event’s budgeted fee for these outreaches in order to cover expenses for services provided by ATP Ministries and Victor Marx. The only exceptions are events at youth facilities for which ATP Ministries does not request or accept fees for services.

“As an ordained pastor (minister), Victor, like most other ministers, receives an income for teaching and instructing people typically gathered at a religious institution such as a church. Victor is an itinerant minister, meaning that he does not instruct at a church of his own, but is called on by the head ministers at various churches from time to time to teach (or substitute) a message either in the absence of the minister himself, or in addition to instruction that the head minister feels is of benefit to their (sic) congregation. In the event that Victor is called on to teach in place of the head minister at any of this type of institution, Victor is given payment for his services. This is, as an ordained minister, a source of income for Victor Marx and his family. These payments are made directly to Victor Marx (Victor Marx LLC) and not to ATP Ministries.”

You also noted that the California Secretary of State lists the two business entities of Victor Marx:

- With God All Things Are Possible Ministries Entity number: C3178969
- Victor Marx, LLC Entity number: 201225710034

Finally, on November 15, in an email, you indicated that Mr. Marx may be considering serving as a local elected public official in the future.

ANALYSIS

Section 89502(a) provides: “No elected state officer, elected officer of a local government agency, or other individual specified in Section 87200 shall accept any honorarium.” Section 89502(b)(1) further provides that no candidate for elective state office, for judicial office, or for elective office in a local government agency may accept any honorarium.

The term “honorarium” is defined as “any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering.” (Section 89501(a).) “Speech given,” as used in Section 89501, “means a public address, oration, or other form of oral presentation, and includes participation in a panel, seminar, or debate” but does not include a comedic, dramatic, musical, or other similar artistic performance.” (Regulation 18931.1.)

Absent some other exception, the prohibition has been applied to income generated from motivational speeches. (See, *McBrayer* Advice Letter, No. A-09-163.)

However, the statute also provides that the term “honorarium” does not include:

“(1) Earned income for personal services which are customarily provided in connection with the practice of a bona fide business, trade, or profession, such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting, unless the sole or predominant activity of the business, trade, or profession is making speeches.”

Regulation 18932.1 explains that for purposes of Sections 89501 through 89506, a business² is presumed to be “bona fide” if the owner of the business has maintained the following documents for the two calendar years immediately preceding the year in which consideration for any payment was provided:

- Books and records of accounting consistent with the operation of a business; and
- Copies of tax returns filed in connection with the operation of the claimed business.

You stated that Mr. Marx has operated the ministry for 10 years. It appears that the ministry would meet the criteria required to satisfy the presumption. In the past, we have considered whether a church or ministry can be a bona fide business for which payments can be received without implicating the honoraria ban.

² Regulation 18932(b) provides that “For purposes of Government Code Sections 89501 through 89506 and this section, a nonprofit entity may be a ‘business’.”

- In 2011, in the *Jones* Advice Letter, No. A-11-229, we advised that an official that received payments for speaking to church groups could accept them because he was a former paid associate pastor for a community church and the presentations were “sermons” in which he gave “religious or moral instruction.” In that case, the official did not have a current “business” associated with the presentations.
- In 1997, we concluded in the *Washington* Advice Letter, No. A-97-119, that as an ordained minister, an elected official could accept payments for continuing his ministry and conducting church services. Payments you receive for continuing your ministry and conducting church services (conducting church activities and speaking as an ordained minister at youth camps, retreats, weddings, and funerals) are income received in the practice of a bona fide business, trade, or profession, and therefore are not prohibited honoraria. However, we also cautioned that the “bona fide business” exception does not apply to a business whose sole or predominant activity is making speeches.
- In 1995, in the *Metcalf* Advice Letter, No. A-95-316 we also advised that payments receive by a lieutenant with the Carlsbad Police Department for speaking at youth camps, couples retreats, weddings, and funerals are income received in the practice of a bona fide business, trade, or profession, and therefore are not prohibited honoraria. The official in this case was also a pastor at a community church.
- Finally, in the 1993 *Boatwright* Advice Letter (No. A-93-323) we advised that an ordained minister hired as a legislative staff member could continue to receive payment for conducting church services and continuing his ministry because those services constitute the practice of, or employment in, a bona fide business under the Act.

However, a business whose predominant activity is making speeches is not “bona fide” for purposes of the exception. “Predominant activity” is itself defined at Regulation 18932.3. As pertinent to a business like yours, the regulation states:

“For purposes of Government Code Sections 89501 through 89506, speechmaking is presumed to be the ‘predominant activity’ of an individual’s business, trade, or profession in the following circumstances:

“(a) For a business, trade, or profession in existence for one year or more:

“(1) During the 12-month period prior to and including the date of the speech, more than 50 percent of the hours spent on an individual’s business, trade, or profession is devoted to the preparation and/or delivery of speeches; or

“(2) During the 12-month period prior to and including the date of the speech more than 50 percent of the gross income of the individual’s business, trade, or profession is derived from the preparation and/or delivery of speeches.”

The ministries activities appear to be varied and diverse. Moreover, donations constitute a substantial funding source for the ministry. Fees from speaking are only a part of the funding of the ministry. It does not appear that speaking is the predominant activity of the ministry as set forth above.

Thus, it appears the ministry would be a bona fide business and payments for sermons and other ministry speaking events would not be banned honoraria. However, such payments would still constitute income and as such, if Mr. Marx were elected to office, would need to be reported on his statement of economic interests.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: John W. Wallace
Assistant General Counsel
Legal Division

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